

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3761 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JEKAJI PARBATJI JAWANJI THAKORE

Versus

DISTRICT MAGISTRATE

Appearance:

MS DR KACHHAVAH for Petitioner

MR NIGAM SHUKLA, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 15/10/96

ORAL JUDGEMENT

This Special Civil Application is directed against the detention order dated 19th April, 1996 passed by the District Magistrate, Mehsana, detaining the petitioner under the provisions of the Gujarat Prevention of Antisocial Activities Act, 1985 ("PASA Act" for short). The detention order was executed on 22nd

April,1996 and since then the petitioner is under detention lodged at Junagadh District Jail, Junagadh.

This Special Civil Application was filed in this Court on 20th May 1996 and on 21st May,1996 rule returnable by 8th July,, 1996 was issued. So far neither any reply has been filed on behalf of the respondents nor any affidavit-in-reply has been filed by the detaining authority.

The grounds of detention enclosed with the detention order show that seven criminal cases under Prohibition Act were registered against the petitioner , out of which, six were pending in the Court and in one case the police investigation was going on at the time when the detention order was passed. After noticing the allegations of the criminal cases showing that the petitioner was engaged in the business of manufacturing country liquor, selling and transporting the same to other districts, the detaining authority has relied upon the four statements made by the witnesses against the petitioner on 26th February, 1996 and 27th February,1996. The witnesses have stated that the petitioner has been pressurising the witnesses to cooperate with him in his unauthorized business of liquor and in case the witnesses do not cooperate they are threatened and publicly beaten. The witnesses were frightened and afraid of the petitioner and have requested to keep their identity a secret. Accordingly, the detaining authority invoked the provisions of Section 9(2) of the PASA Act. The detaining authority has recorded the satisfaction so as to order the petitioner's detention and has recorded that the petitioner was a bootlegger and was engaged in the antisocial activities and that he has become a threat to the public order and was therefore required to be detained. It has also been recorded that the provisions of externment may not be expedient and it was necessary to detain the petitioner to prevent him from continuing with his unlawful and antisocial activities.

Although the detention order has been challenged on more than one grounds, the learned Counsel for the petitioner has laid stress on the ground that the allegations as have been levelled against the petitioner even if taken to be true on its face value do not constitute a case of breach of public order. The learned Counsel has contended that at the most it can be said to be a breach of law and order and the detention order therefore deserves to be quashed and set aside on this ground alone.

I have considered the allegations and materials relied upon against the petitioner by the detaining authority while passing the impugned detention order. On 4th October, 1996 itself a detailed order has been passed in Spl.Civil Application no.3879/1996 in which a considered view has been taken on the basis of the ratio decidendi of several Supreme Court decisions and the decision of this Court that the allegations and materials such as has been relied upon in the present case do not constitute a case of breach of public order and at the most it can be said to be a breach of law and order. The aforesaid decision applies on the facts of this case with full force and I find that the impugned order of detention has been passed on the collateral ground of law and order. In absence of any ingredients of the breach of public order, the impugned detention order deserves to be set aside on this ground alone.

Accordingly this Special Civil Application is allowed. The impugned detention order dated 19 April, 1996 passed by the District Magistrate, Mehsana, is hereby quashed and set aside. The detention of the petitioner is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.

sf-mrc